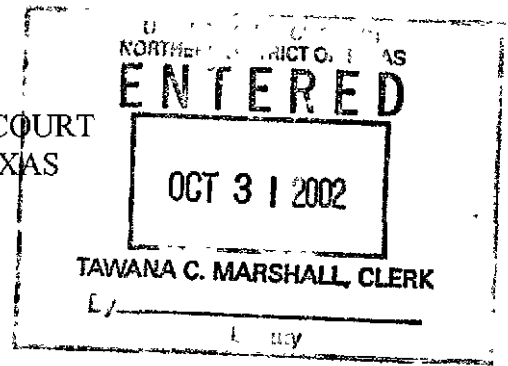


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



IN RE: §
§
CRANDALL CONSTRUCTION §
CORPORATION, et al, MOTION FOR REMAND § CASE NO. 02-404
Debtors §
§

CRANDALL CONSTRUCTION §
CORPORATION, NORTEX VZC, § ADVERSARY NO. 02-4242
and KENNEDY ELECTRIC §
SERVICE f/k/a KENNEDY PERSONS §
ELECTRIC §
Plaintiffs, §
§
vs. §
§
JAY MAAI, LLC., §
M & J CONSTRUCTION, INC. §
f/k/a DBCS CORPORATION and §
CORBELL COMPANIES, LLC §
Defendants. §
§

MEMORANDUM OPINION AND ORDER

Before this court is Plaintiffs' ("Plaintiffs") Motion to Remand and Motion for Abstention (the "Motion"). In the Motion Plaintiffs ask that this adversary proceeding be remanded to the 141st District Court of Tarrant County. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§157(a), 1334 and 1452.

I. Background

Plaintiffs are Crandall Construction Corporation, Nortex VZC and Kennedy Electrical Service f/k/a Kennedy Persons Electric. Defendants are Jay Maai, LLC ("Maai"), M & J Construction, Inc. f/k/a DBCS Corporation ("DBCS") and Corbell Companies, LLC ("Corbell").

Defendants DBCS and Corbell have not appeared in connection with the Motion and apparently have not answered or otherwise participated in the underlying adversary proceeding.

Plaintiffs filed suit against Defendants in the 141st District Court, Tarrant County, Texas, for failing to pay for construction services and for foreclosure of mechanics' and materialmens' lien claims. The suit was removed on or about September 13, 2002 to the United States District Court for the Northern District of Texas and automatically referred to this court.

Corbell was Maai's general contractor for the construction of a hotel in Haltom City, Texas. Plaintiffs in the underlying adversary were subcontractors of Corbell that allege they were not paid by Corbell. By the adversary proceeding they would enforce their claims against Corbell or through foreclosure on the hotel in Haltom City.

The situation, however, is complicated by the manner in which Corbell's performance of its obligations as a general contractor was obtained. Maai, and others, executed a promissory note payable to Corbell to partially fund construction (the "Note"). The Note was secured by a different hotel property, owned by JJBD, Inc. ("JJBD") and located in Tyler, Texas. Corbell subsequently transferred the Note to Leonard Teninbaum, Trustee ("Teninbaum").

On November 5, 2001, JJBD filed for relief under chapter 11 of the Bankruptcy Code. JJBD's bankruptcy case is currently pending in the United States Bankruptcy Court for the Eastern District of Texas in Tyler. The hotel property securing the Note is thus property of the bankruptcy estate in that case. Consequently the amounts due Corbell for work on the Haltom City hotel are of potential importance in JJBD's chapter 11 case.

On February 8, 2002, JJBD commenced an adversary proceeding in its bankruptcy case against Maai, Corbell and others. JJBD alleges that the debt owed Corbell by Maai is invalid as to JJBD and disputes the validity of the lien asserted against its property.

Meanwhile, Teninbaum filed suit in state district court in Harris County, Texas against certain makers of the Note, including Defendants. Defendants removed that case to the United States District Court for the Southern District of Texas. From there, the case was transferred to the United States District Court for the Eastern District of Texas and referred to the bankruptcy court for consolidation with JJBD's adversary proceeding. The bankruptcy court in Tyler is thus positioned to adjudicate the amount of and liability under the Note.

Because Plaintiffs seek in the underlying adversary proceeding to enforce liens against the Haltom City hotel, and since satisfaction of Plaintiffs through this adversary proceeding would affect the amount owed on the Note, Defendants believe this adversary proceeding should be heard in conjunction with the matters pending in the Tyler court. They argue that the possibility of inconsistent results in the suit pending in Tyler and in the instant adversary, discovery problems and judicial economy favor retention of this adversary by this court and then its transfer to Tyler.

Plaintiffs, on the other hand, points out that this adversary proceeding does not involve JJBD (the only Title 11 debtor concerned with the Note) or any property of JJBD's estate. The adversary itself raises only issues of state law and, argue Plaintiffs, should properly be heard by the state court.

II. Discussion

The court must agree with Plaintiffs. This adversary proceeding has only the most tenuous connections to JJBD's chapter 11 case. The court questions whether a federal forum could even assert jurisdiction over this adversary proceeding as a matter "related to" JJBD's chapter 11 case.

28 U.S.C. § 1334(b). *See, e.g., In re S&M Constructors, Inc.*, 144 B.R. 855 (Bankr. W.D. Mo. 1992).

Certainly this adversary proceeding does not qualify as a core proceeding and so could not be heard by the Tyler bankruptcy court without Plaintiffs' consent. Thus, if this court does not remand this matter but rather transfers it to the Eastern District of Texas, Defendants and JJBD will be faced with either consolidating all proceedings before the District Court or the same possibility of inconsistent results between two courts.

While it is true that some factors typically cited as requisites for remand of a removed proceeding (e.g., judicial economy and possibly inconsistent results) favor retention of this adversary, others (comity, state court expertise and inconvenience to the parties opposing removal) favor remand. *See* 1 COLLIER ON BANKRUPTCY ¶ 3.07[5] (15th ed. rev. 2002); *In re U.S. Air Duct Corp.*, 8 B.R. 848, 854 (Bankr. N.D.N.Y. 1981); *In re Marshall*, 20 B.C.D. 23, 31 (Bankr. W.D. Mich. 1990). Given the questionable jurisdictional basis in the instant case, remand is the more proper result.

Moreover, the court is concerned that a transfer of this case to Tyler could lead to a procedural conundrum. Because of the jurisdictional issues, the Tyler bankruptcy court might well determine that this case is subject to abstention and remand. Yet, since remand would be from Tyler to this court, abstention could result in an unresolvable procedural tangle. *See* unreported decisions in *In re Agent Systems, Inc.*, No. 01-48402 (Bankr. N.D. Tex. 2002) and *In re U.S. Refining & Marketing Co., Inc.*, 210 F. 3d 387 (9th Cir. 2000; opinion at 2000 U.S. App. Lexis 219).

Finally, the court questions Defendants' concern about the possibility of inconsistent results between the Tyler and Tarrant County forums. Defendants argue that the Tyler bankruptcy court

might reach a different determination regarding prior payments to some of the Plaintiffs than would the state court, so harming Defendants. However, even if issue preclusion would not apply to protect Defendants, relief may be sought in the Tyler court pursuant to 11 U.S.C. § 105. If pursuit of Defendants in state court could result in irreparable harm to them as a result of litigation in the JJBD chapter 11 case, section 105 gives the Tyler bankruptcy court authority to temporarily stay Plaintiffs from pursuing the state court proceedings or otherwise fashion a remedy suited to the needs of the case. 2 COLLIER ON BANKRUPTCY

¶ 105.03[1][b].

III. Conclusion and Order

For the foregoing reasons, the court concludes remand in this case is appropriate. It is therefore

ORDERED that this adversary proceeding be remanded to the 141st District Court for Tarrant County, Texas; and it is further

ORDERED that the clerk of this court take all steps necessary to remand this matter to such court.

SIGNED this the 31st day of October 2002.



DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE